



Questions and Answers: Draft Economic Analysis for Six West Texas Aquatic Invertebrates

Southwest Region (Arizona • New Mexico • Oklahoma • Texas) www.fws.gov/southwest/

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Q: What action is the U.S. Fish and Wildlife Service (Service) taking?

A: The Service is announcing the Notice of Availability of the draft economic analysis (DEA) for the proposed critical habitat for the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail and Pecos amphipod. The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the six west Texas invertebrates over the next 20 years. In addition, the Service is announcing the reopening of the public comment period for 45 days and will hold a public hearing on February 21, 2013, at Balmorhea State Park in Toyahvale, Texas.

Q: What information is the Service requesting?

A: Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. With respect to the listing proposal for the six west Texas invertebrates we request that the public provide comments specifically under the existing docket number FWS-R2-ES-2012-0029. The Service is particularly interested in information regarding:

- (1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.
- (2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.
- (3) Any information on the biological or ecological requirements of the species and ongoing conservation measures for the species and its habitat.
- (4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

With respect to the critical habitat determination and draft economic analysis we request that the public provide comments at www.regulations.gov under docket number FWS-R2-ES-2013-0004. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

- (5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 et seq.) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.
- (6) Specific information on:
 - (a) The amount and distribution of habitat for the six west Texas aquatic invertebrates;
 - (b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;
 - (c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and
 - (d) What areas not occupied at the time of listing are essential for the conservation of the species and why.
- (7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.
- (8) Information on the projected and reasonably likely impacts of climate change on the six west Texas aquatic invertebrates and proposed critical habitat.
- (9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.
- (10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate.
- (11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.
- (12) Whether the benefits of exclusion outweigh the benefits of including the area proposed as critical habitat around San Solomon Spring at Balmorhea State Park based on the existing habitat conservation plan or other relevant factors.

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Comments or information submitted on the proposed rule (77 FR 49601) during the initial comment period from August 16, 2012, to October 15, 2012, do not need to be resubmitted. We will incorporate them into the public record as part of this comment period, and will fully consider them in the preparation of our final determination.

Q: How can the public submit information?

A: The Service is requesting comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties.

On February 21, 2013, the Service will hold a public informational session and a public hearing. The informational session and public hearing will be held in the conference room at Balmorhea State Park, State Highway 17, Toyahvale, Texas. The public information session will begin at 5:00 p.m. CT and the public hearing will begin at 6:00 p.m. CT.

Written comments and information concerning this finding can be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R2–ES–2012–0029 regarding the listing of the species. Submit comments to FWS–R2–ES–2013–0004 regarding the designation of critical habitat or the economic analysis; or
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R2–ES–2012–0029/2013–0004; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Comments must be received within 45 days, on or before March 22, 2013. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

For further information contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone (512) 490-0057; or by facsimile (512) 490-0974. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

Q: How would the six west Texas invertebrate species benefit from an Endangered Species Act (ESA) listing?

A: Species listed as endangered or threatened under the ESA benefit from conservation measures that include recognition of threats to the species, implementation of recovery actions, and federal protection from harmful practices.

Recognition under the ESA results in public awareness and conservation by federal, state, tribal, and local agencies; private organizations; and individuals. The ESA encourages cooperation with the States and other partners to conserve listed species.

The ESA also requires the Service to develop and implement recovery plans for the conservation of threatened and endangered species. Recovery plans outline actions that are needed to improve the species' status such that it no longer requires protection under the ESA. The Service develops and implements these plans in partnership with the species experts; other federal, state, and local agencies; Tribes; nongovernmental organizations; academia; and other stakeholders. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Examples of typical recovery actions include habitat protection, habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education.

Under the ESA, federal agencies must ensure that actions they approve, fund, or carry out do not jeopardize the continued existence of a listed species or destroy its critical habitat. In addition, under the ESA, endangered animal species cannot be killed, hunted, collected, injured, or otherwise subjected to "harm." Endangered species cannot be purchased or sold in interstate or foreign commerce without a federal permit.

Q: What is critical habitat?

A: Critical habitat is a term in the ESA that identifies geographic areas essential for the conservation of a threatened or endangered species. The ESA defines "conservation" as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

Critical habitat provides protection from the prohibition against destruction or adverse modification from actions carried out, funded, or authorized by a federal agency and is carried out through required consultation under section 7 of the Endangered Species Act. Due to legal challenges, the Service no longer relies on the regulatory definition of "destruction or adverse modification" of critical habitat. Instead, the Service relies on the statutory provisions of the ESA to complete adverse modification analysis.

The Service may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Q: What is the purpose of designating critical habitat?

A: A critical habitat designation generally has no effect on situations that do not involve a federal agency — for example, a private landowner undertaking a project that involves no federal funding

or permit. Federal agencies are required to consult with the Service on actions they carry out, fund, or authorize to ensure that their actions will not destroy or adversely modify critical habitat. In this way, a critical habitat designation protects areas that are necessary for the conservation of the species.

Q: What is an economic analysis?

A: Under the Endangered Species Act, the Service is required to take into consideration the economic impact, and any other relevant impact, of designating particular areas as critical habitat. An economic analysis provides estimated costs of the foreseeable economic impacts of a critical habitat designation. The economic analysis does not include costs associated with the listing of the species as endangered, but only those incremental costs that may occur due to the designation of critical habitat.

Q: What are the potential economic impacts of designating critical habitat for the six west Texas invertebrates?

A: The draft economic analysis quantifies economic impacts of the six west Texas invertebrates conservation efforts associated with the following categories of activity: water withdrawals for agricultural and municipal uses, oil and gas development and recreation and species management. Total present value impacts anticipated to result from the critical habitat designation of all units for the six west Texas invertebrates is \$40,000 over a 20-year period (2013-2032). The anticipated incremental costs are relatively low given that the entire proposed habitat is occupied by the species, the species' survival is closely linked to the quality of their habitat, few actions being carried out in the area are subject to a Federal nexus, and much of the proposed critical habitat is already being managed for conservation.

Q: Do listed species in critical habitat areas receive more protection?

A: Listed species and their habitat are protected by the ESA whether or not they are in an area designated as critical habitat. To understand the additional protection that critical habitat provides to an area, it is first necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated for it.

The ESA forbids anyone to import, export, or engage in interstate or foreign sale of endangered and threatened animals and plants without a special permit. It also makes "take" illegal -- forbidding the killing, harming, harassing, pursuing, or removing the species from the wild. The ESA requires that federal agencies conduct their activities in such a way as to conserve species. The ESA also requires federal agencies to consult with the Service to conserve listed species on their lands and ensure that any activity they fund, authorize, or carry out will not jeopardize the survival of a threatened or endangered species. This is known as consultation.

In consultations for species with critical habitat, federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat to the point that it can no longer serve its conservation role in the species' recovery. The greatest benefit of critical habitat occurs in areas that are currently unoccupied by the species, but are needed for its recovery. With critical habitat

designations, these unoccupied areas are protected by the prohibition against destruction and adverse modification of critical habitat.

Q: Does a ‘critical habitat’ designation mean an area is considered a wildlife refuge or sanctuary?

A: No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on State or private actions on State or private lands where no federal funding, permits or approvals are required.

Q: How would a critical habitat designation affect my private land?

A: Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to federal lands or federally funded or permitted activities on private lands. Activities on private or state lands that are funded, permitted or carried out by a federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species.

Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting species or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q: When an area is designated as critical habitat, are all human activities in the area prohibited?

A: No. The only activities prohibited in these areas are federal actions that are likely to result in destruction or adverse modification of the critical habitat for the six west Texas invertebrate species. The consultation process supports the recovery of species and their ecosystems. Consultations provide ways to implement recovery tasks by addressing threats to listed species that may result from federal agency programs and activities through a collaborative process. For more information go to: <http://www.fws.gov/endangered/esa-library/pdf/consultations.pdf>.